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UNCLAS SECTION 01 OF 02 TEGUCIGALPA 000560

SIPDIS

SENSITIVE

DEPT FOR EB/IPC WILSON  
DEPT PLEASE PASS TO USTR FOR ALVAREZ  
DEPT PLEASE PASS TO LIBRARY OF CONGRESS, COPYRIGHT FOR TEPP  
DEPT PLEASE PASS TO USPTO FOR URBAN  
GENEVA PASS USTR  
DOC FOR LASHLEY

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [HO](#) [KIPR](#)

SUBJECT: 2003 SPECIAL 301 REVIEW: HONDURAS

REF: SECSTATE 43684

[11.](#) (U) Sensitive But Unclassified Post submission of the 2003 Special 301 Review for Honduras follows.

[12.](#) (SBU) Summary and Comment: Honduras is largely in compliance with the Trade Related Aspects of Intellectual Property Rights (TRIPS), but there have been no additional moves in the past year by Government of Honduras (GOH) to strengthen the protection of Intellectual Property Rights (IPR). Embassy recommends that Honduras remain on the watch list.

#### OPTICAL MEDIA PIRACY

[12.](#) (U) Although Honduras has yet to experience large-scale in-country optical pirating, it is believed that a significant amount of pirated goods is imported from neighboring countries and that the piracy of books, sound and video recordings, compact discs and computer software is still widespread. Confiscation has been erratic and usually involves minor seizures of CDs. Success in controlling optical piracy rests on the GOH's ability to effectively implement current laws.

#### USE/PROCUREMENT OF GOVERNMENT SOFTWARE

[13.](#) (U) The GOH has made progress in its protection of the use and procurement of government software. After a meeting in 2002 between the new government and Econoff during which he reminded them of their responsibilities, Honduras' IPR Division sent letters to all government agencies informing them that all government software use must comply with Honduran national law and international agreements. Due to a lack of resources and personnel at the IPR division, oversight and enforcement has been nonexistent.

#### TRIPS COMPLIANCE

[14.](#) (U) Honduras largely has complied with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), through legal revisions enacted in December 1999. The Honduran Congress still must, for instance, adopt reforms related to integrated circuit designs and plant variety protection to be in full compliance with TRIPS. Honduras and the U.S. initialed a Bilateral Intellectual Property Rights (IPR) Agreement in March 1999, but substantive issues arose during the language conformity process. Embassy expects that the current U.S.-Central America free trade negotiations will provide a convenient forum for the USG to push for additional IPR commitments.

[15.](#) (U) Honduras' copyright law, updated in 1999, added more than 20 different criminal offenses related to copyright infringement and established fines and suspension of services that can be levied against offenders. U.S. companies are concerned that recent attempts to prosecute computer software infringement cases have been met with inadequate support by officials in the Ministry of Industry and Trade's IPR Division and the Attorney General's office.

[16.](#) (U) Honduras ratified the Paris Convention for the Protection of Industrial Property in 1994. The Honduran Congress enacted a 1999 Law of Industrial Property to provide improved protection for both trademarks and patents. To be protected under Honduran law, patents and trademarks must be registered with the Ministry of Industry and Trade.

[17.](#) (U) Recent modifications to the Patent Law of 1993 include patent protection for pharmaceuticals, and extend the term of protection for a patent from seventeen to twenty years from the date of filing to meet WTO standards. The term for cancellation of a trademark for lack of use has been extended from one year to three years. Trademarks are valid for up to 10 years from the registration date. The illegitimate registration of well-known trademarks has, in the past, been a persistent problem in Honduras.

[18.](#) (U) The protection of data exclusivity by the GOH has been

raised by the pharmaceutical and pesticide companies. A U.S. pharmaceutical company has complained that the Ministry of Health, in approving a competing company's pharmaceutical product, did not respect their data exclusivity rights as guaranteed in article 77 of Honduras' Industrial Property Law and article 39 of the WTO TRIP's agreement. The Ministry of Health approved the competing pharmaceutical product, despite communication from Honduras' IPR Division that the U.S. company's research and data were protected under Honduran law. The U.S. company argues that in order for the competing product to be legally registered with the Ministry of Health, the company needs to provide the research and data to support their application. Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products. Further, a regional association of pesticide companies met with Econoffs on a number of occasions to express concern over the GOH's 5-year data exclusivity period which from their perspective is insufficient to justify product development and testing in Honduras.

#### WORLD INTELLECTUAL PROPERTY RIGHTS ORGANIZATION

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19. (U) Honduras became a member of the World Intellectual Property Organization (WIPO) in 1983. Honduras has not yet ratified the WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonogram Treaty (WPPT). The treaties were signed two years ago and are still awaiting ratification in the National Congress.

#### IPR ENFORCEMENT

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10. (U) The 1999 Copyright Law specifies three different avenues in the prosecution of copyright infringement cases: administrative, civil and criminal. After confiscating pirated goods, the GOH can file an administrative case that may result in a fine. However, the law requires companies whose rights have been violated to file civil and criminal charges. Few U.S. companies have asserted their right to file either a civil or criminal case, leaving the resource strapped prosecutor's office responsible for the lawsuits. As a result, few cases are tried to the full extent of the law.

11. (U) Enforcement of the law relies largely on periodic sweeps in the market and on investigations carried out after an accusation has been made. The GOH Customs and Tax Authority (DEI) is responsible for impeding the flow of illegal goods into Honduras. IPR officials commented that police and DEI officials lack the skills and resources to identify and control the flow of pirated products.

Palmer